SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-075
District Docket No. XIV-2023-0376E

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In the Matter of Todd Andrew Goodman
An Attorney at Law

Argued
July 25, 2024

Decided
September 5, 2024

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Hilliary K. Horton appeared on behalf of the
Office of Attorney Ethics.

Respondent appeared pro se.

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## Introduction

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and convictions, in the United States District Court for the Eastern District of Pennsylvania (the EDPA), for one count of misdemeanor knowingly dispensing a controlled substance without a valid prescription, in violation of 21 U.S.C. § 842(a)(1) and (c)(2)(A), and one count of misdemeanor aiding and abetting in the distribution of a controlled substance, in violation of 18 U.S.C. § 2. The OAE asserted that these offenses constitute violations of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

For the reasons set forth below, we determine to grant the motion for final discipline and conclude that a three-year suspension, retroactive to respondent's January 19, 2024 temporary suspension, is the appropriate quantum of discipline for his misconduct.

## Ethics History

Respondent earned admission to the New Jersey and Pennsylvania bars in 1989. Additionally, in 1986, the Pennsylvania State Board of Pharmacy registered respondent as a licensed pharmacist. He has no prior discipline in New Jersey.

During the relevant timeframe, between 2005 and 2021, respondent worked as a part-time pharmacist at Verree Pharmacy (Verree), in Philadelphia, Pennsylvania. Additionally, from 2014 through 2024, respondent practiced law as a part-time associate at Oxman Goodstadt Kurtz, P.C., which maintains offices in Philadelphia, Pennsylvania, and Linwood, New Jersey.

Effective January 19, 2024, the Court temporarily suspended respondent in connection with his misconduct underlying this matter. In re Goodman, 256 N.J. 293 (2024). Additionally, effective March 25, 2024, the Supreme Court of Pennsylvania temporarily suspended respondent in connection with the same misconduct. In re Goodman, 2024 Pa. LEXIS 466 (2024).

## Facts

*Background*

Verree was a small, neighborhood pharmacy authorized by the United States Drug Enforcement Administration (the DEA) to purchase and dispense

Schedule II through V controlled substances, including oxycodone, a generic version of the opioid drug oxycontin. Opioid drugs can cause physical and psychological dependence, even when taken as prescribed and, when taken in high doses, can cause life threatening conditions or death, particularly when used in combination with alcohol or other controlled substances.

The Controlled Substance Act (the CSA), 21 U.S.C. §§ 801-971, governs the manufacturing and dispensing of controlled substances in the United States. Among other provisions, the CSA strictly limits when retail pharmacies can dispense controlled substances to patients. Generally, pharmacies can dispense such medication only after receiving a valid prescription from a physician. 21 U.S.C. § 829(a) and (b); 21 C.F.R. § 1306.04(a).

Pursuant to the CSA's implementing regulations, the "responsibility for the proper prescribing . . . of controlled substances is upon the [physician,] but a corresponding responsibility [for the proper dispensing of controlled substances] rests with the pharmacist who fills the prescription." 21 C.F.R § 1306.04(a). Accordingly, pharmacists have a legal duty to ensure that prescriptions for controlled substances are legitimate before dispensing such medication. A reasonably prudent pharmacist must be familiar with suspicious behavior suggesting that the prescribed controlled substances are at risk for abuse or diversion. Such suspicious behavior may include prescriptions for large

quantities of opioids and patients willing to pay large sums of cash for such drugs, particularly when they have insurance coverage.

*The December 1, 2022 Indictment*

On December 1, 2022, an EDPA grand jury issued a ten-count indictment charging respondent and Eric Pestrack, the lead pharmacy technician at Verree, with one count of conspiracy to distribute controlled substances, in violation of 21 U.S.C. § 846, and nine counts of distribution of controlled substances, in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2. The indictment alleged that, from January 2012 through December 2019, respondent, Pestrack, and Mitchell Spivack, the registered pharmacist who owned and operated Verree,[1] conspired to knowingly dispense illegitimate prescriptions for controlled substances, generating approximately $5 million in profit for Verree.

The indictment detailed dozens of illicit transactions in which respondent and Pestrack allegedly dispensed numerous quantities of controlled substances, based on altered prescriptions, in exchange for cash payments to Verree. Respondent, however, neither pleaded guilty to nor stipulated to the allegations

[1] On June 29, 2022, Spivack waived indictment and pleaded guilty to an information charging him with conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, for conspiring to submit fraudulent claims to healthcare benefit programs and to distribute medically unnecessary controlled substances. Spivack received a forty-two-month term of imprisonment for his conduct.

set forth in the December 2022 indictment during his criminal proceedings before the EDPA.

*The September 5, 2023 Superseding Information*

On September 5, 2023, the United States Attorney for the EDPA issued a superseding information, charging both respondent and Pestrack with one count of misdemeanor knowingly dispensing a controlled substance without a valid prescription, in violation of 21 U.S.C. § 842(a)(1) and (c)(2)(A), and one count of misdemeanor aiding and abetting in the distribution of a controlled substance, in violation of 18 U.S.C. § 2. According to the superseding information, on May 26, 2018, respondent and Pestrack knowingly dispensed 240 tablets of oxycodone, in 30 milligram doses, to an individual based on "an altered and forged" written prescription. Moreover, respondent conceded that he was aware that the prescription had been forged and, thus, that it was not a valid written prescription issued by a licensed physician. In exchange for the 240 tablets of oxycodone, the individual paid respondent $820, in cash, which respondent remitted to Verree.

*The Criminal Proceedings Before the EDPA*

On September 6, 2023, respondent waived indictment on the superseding information and pleaded guilty to knowingly dispensing a controlled substance without a valid prescription and aiding and abetting in the distribution of a controlled substance. In exchange for his guilty plea, the government agreed to seek the dismissal of the entire December 1, 2022 indictment against him. During his plea hearing, respondent admitted to the facts underlying his May 26, 2018 criminal distribution of 240 tablets of oxycodone to an individual, based on a forged prescription, in exchange for the $820 cash payment that he had remitted to Verree.

On September 21, 2023, respondent, through counsel, belatedly notified the OAE of his criminal charges underlying the December 2022 indictment and the September 5, 2023 superseding information. Respondent also notified the OAE of his September 6, 2023 guilty plea. In his letter to the OAE, respondent acknowledged that he had failed to promptly notify the OAE of his criminal charges, as R. 1:20-13(a) requires, but maintained that, until recently, he had been unaware of that obligation.

On December 13, 2023, respondent appeared for sentencing, before the Honorable Harvey Bartle, III, U.S.D.J., where the parties agreed that a zero to six-month term of imprisonment represented the appropriate range of sentence

under the Federal Sentencing Guidelines for respondent's criminal conduct. At the outset of the proceeding, Judge Bartle granted respondent's application to remove, from the pre-sentence report, any "background information" concerning Spivack's larger scheme of healthcare fraud, which the government agreed was not "at issue here."[2]

Additionally, Judge Bartle granted respondent's application to remove, from the pre-sentence report, the descriptions of the other alleged instances in which he improperly had dispensed oxycodone, based on forged prescriptions, to the same individual who had received the 240 tablets of illicit oxycodone from him on May 26, 2018. In connection with his application, respondent's counsel conceded to Judge Bartle that respondent's conduct was not "a one off. I . . . wouldn't . . . begin to state that. That's not consistent with the evidence." Although respondent's counsel stated that Judge Bartle could "consider that there were other instances" in which respondent distributed illicit oxycodone to the individual, he argued that such information "should not be included in the pre-sentence report."

In urging the imposition of a six-month term of imprisonment, the government emphasized that respondent, as a licensed and trained pharmacist, knowingly dispensed large quantities of oxycodone based on "forged"

[2] The EDPA declined to release the pre-sentence report to the OAE.

prescriptions, with "blatant red flags," during the "span [of] several years." Additionally, the government underscored how the forged prescription underlying the May 26, 2018 illicit transaction contained a name that was "written over," a date "with a line across it," and "some codes" which were "scribbled over." Respondent, however, ignored those "red flags," failed to conduct any due diligence to determine the validity of the prescription, and knowingly dispensed large quantities of opioids based on the forged prescription. Moreover, Verree's records falsely indicated that respondent had billed "Workers' Compensation" for the prescription, even though respondent, in fact, had accepted an $820 cash payment for the illicit transaction. By using "his skills and training to pump high quantities of dangerous drugs into the community," the government argued that respondent had "perpetuated" the national opioid epidemic.

Respondent presented the character testimony of a long-time attorney colleague, who had employed respondent as a part-time associate at his law firm for approximately ten years. The colleague described respondent as "a good man" who had "own[ed] up to his mistake and accept[ed] responsibility for" his crime. The colleague also described respondent's dedication to the practice of law and to the community, including establishing a youth travel sports organization. Further, respondent presented the character testimony of a long-

time family friend, who described respondent as "a man of exemplar[y] character." The family friend also highlighted how respondent had dedicated his time to coach her son's baseball team, and she noted that respondent served as a role model for his children.

Thereafter, respondent addressed Judge Bartle and expressed his apology to the community and to his family for his conduct. Respondent also told Judge Bartle that he had "lost [his] ability to practice pharmacy"[3] and stressed how he would "spend the rest of [his] life rebuilding [his] character."

Respondent, through counsel, urged the imposition of a sentence of probation. At the outset of his argument, respondent's counsel offered the following statement concerning the scope of respondent's illicit behavior:

> I'll start with the nature and circumstances of the offense. And I don't make any excuses. I don't suggest that this was a one off. It did occur over a period of time, notwithstanding that [respondent] pled guilty to the one prescription. He's acknowledged that. I acknowledge that, and I'm not attempting to suggest otherwise to the [c]ourt.
>
> [Ex.Hp.33][4]

[3] At oral argument before us, respondent noted that he was seeking to have his Pennsylvania pharmacy license suspended for one year.

[4] "Ex." refers to the exhibits appended to the OAE's brief.

Respondent, however, noted that he had no criminal history and otherwise had "lived an exemplary life." Moreover, unlike Spivack, respondent's conduct was not "motivated by greed" because he did not receive any financial gain from his illicit behavior, other than his salary for his part-time work as a pharmacist at Verree. Rather, respondent maintained that his criminal behavior resulted from his willingness to accept the "long-standing practice[s]" at Verree and that, because "he went along to get along," he "los[t] . . . his moral compass." Further, respondent claimed that he recently had paid the federal government $60,000 to settle a "civil case" against him in connection with his misconduct as a pharmacist.

Judge Bartle sentenced respondent to a four-month term of incarceration, followed by a one-year period of supervised release, during which Judge Bartle prohibited respondent from dispensing any prescription drugs. Judge Bartle also imposed $1,025 in total fines and assessments against respondent.

In imposing sentence, Judge Bartle found that respondent's conduct was not merely "an aberrational event" resulting in only "a one-time situation where [respondent had] dispensed drugs illegally." Rather, Judge Bartle stated that respondent's "history" demonstrated that his "conduct was going on for a number of years." Judge Bartle also emphasized how respondent's conduct had contributed to the national opioid crisis, resulting in "harm" to those who had

taken the illicitly dispensed controlled substances. Although Judge Bartle found that respondent was not at risk of re-offense, Judge Bartle expressed his "concern about general deterrence of others . . . who may be involved . . . in such conduct." Finally, although respondent had "done a lot of good in [his] life," Judge Bartle stated that he was troubled by not only the fact "that the act was not aberrational[,] but that respondent [also was] a licensed pharmacist and a member of the bar" who should have known that his behavior was unlawful.

**The Parties' Positions Before the Board**

In support of its recommendation for a three-year suspension, the OAE argued that, unlike attorneys who have been disbarred for participating in widescale schemes of drug distribution, the limited record before the EDPA provided no clear and convincing evidence of respondent's involvement in a larger conspiracy of drug distribution. Likewise, the OAE conceded that there is no clear and convincing evidence that respondent profited from his misconduct.

The OAE analogized respondent's misconduct to that of the attorneys in In re Kinnear, 105 N.J. 391 (1987); In re McCarthy, 119 N.J. 437 (1990); In re Musto, 152 N.J. 165 (1997); and In re Banks, 155 N.J. 597 (1998), who, as detailed below, received terms of suspension ranging from one to three years for

distributing controlled substances without receiving any significant financial gain. Specifically, unlike the attorneys in Kinnear (one-year suspension) and Banks (two-year suspension), who merely shared or intended to share drugs with their friends, the OAE emphasized that respondent consciously disregarded his professional responsibility as a licensed pharmacist by dispensing "an unknowable amount of dangerous drugs to others in his community."

The OAE, thus, maintained that respondent's misconduct is most analogous to that of the attorney (and licensed physician) in McCarthy, who received the equivalent of a twenty-seven-month suspension for issuing fraudulent prescriptions for controlled substances, purportedly for others, to fuel his own personal drug use. The OAE argued that, unlike McCarthy, respondent did not suffer from any debilitating drug addiction. Moreover, respondent abused his position as a licensed pharmacist, thereby contributing to the national opioid epidemic and placing the health and safety of his community at risk. Further, in the OAE's view, respondent has no compelling mitigating factors, and his misconduct implicated his professional skills as a pharmacist and eroded the public's trust in that profession. Finally, based on the rising prevalence of prescription drug abuse in New Jersey, the OAE recommended that, going forward, more stringent discipline be imposed for attorneys who distribute narcotics.

At oral argument and in his submissions to us, respondent asserted that he had accepted responsibility for his misconduct via his guilty plea. Specifically, respondent acknowledged that, on May 26, 2018, he illegally dispensed 240 tablets of oxycodone to an individual, based on an altered and forged prescription, in exchange for a cash payment to Veree.

However, to attempt to refute the OAE's claim that he illegally had dispensed opioids "beyond the single instance of" criminal conduct encompassing his guilty plea, respondent submitted a May 30, 2024 affidavit of Lee Kamp, Veree's store manager and pharmacy technician, who had worked with respondent for approximately eighteen years. In Kamp's affidavit, he claimed that respondent "had a reputation for being very conscientious when dealing with patients seeking to fill narcotics." Additionally, Kamp noted that respondent, "[a]t all times, was very concerned and serious about the handling" and "dispensing" of "narcotics." Kamp further maintained that respondent developed and followed procedures "to ensure that narcotic prescriptions were handled properly" and "always made sure the narcotic count in the store was accurate." Kamp also represented that he had observed respondent "frequently [contact] physicians to verify that the narcotic prescriptions were valid and prescribed by the provider." Moreover, Kamp claimed that he "personally observed [respondent] refuse to fill . . . hundreds of narcotic prescriptions

because he was not comfortable filling them for a variety of reasons," including if the "prescription appeared altered." Kamp noted that he had observed respondent, "when presented with a narcotic prescription, do his due diligence to make sure he only dispensed the medication to legitimate patients and refuse[d] to dispense the medications to those who were not legitimate."

Respondent argued that, because Kamp's affidavit did not expressly contradict the facts underlying his May 26, 2018 illegal distribution of oxycodone, the assertions contained therein did not violate the principles of R. 1:20-13(c)(2) governing the relevant evidence that we may consider, in mitigation, in motions for final discipline.

Additionally, respondent argued that the OAE had "taken out of context" his counsel's admission, during sentencing, that his conduct was not a "one off" incident and that "[i]t did occur over a period of time, notwithstanding that [he] pled guilty to the one prescription." Specifically, although respondent admitted that he had, "for years," "fill[ed]" prescriptions for the same individual who had received the illegally dispensed oxycodone on May 26, 2018, he maintained that he had been "unaware" that such prescriptions "had been forged or altered."

Respondent emphasized, in mitigation, that he had not profited from his misconduct and that, in contrast to the attorney in Spivack, he "had a reputation as a conscientious pharmacist" who would attempt to confirm the legitimacy of

prescriptions for narcotics. Respondent also submitted two character letters that he had provided to the EDPA in connection with his sentencing.

In the first letter, respondent's long-time attorney colleague, who had appeared before Judge Bartle, described respondent's commitment to the practice of law. This colleague also detailed respondent's commitment to community service through his establishment of a youth travel sports organization. Respondent's colleague noted that, in his view, respondent was "a man of good character" who "always conducted himself in an ethical manner."

In the second letter, a former client described respondent's extensive efforts to achieve a successful resolution in connection with her personal injury matter. In her view, respondent was "by my side fighting my case, winning every court hearing over . . . [twenty] plus years." The former client described respondent as kind, honest, and incredibly generous.

Respondent urged the imposition of, at most, a one-year suspension, underscoring his lack of prior discipline and that he was convicted of only "a misdemeanor" that was unrelated to the practice of law. Respondent also emphasized that his conduct did not result in any harm to his clients, constitute acts of "fraud or deception," or lead to his personal gain or profit. In support of his recommended sanction, in addition to relying on disciplinary cases concerning drug distribution referenced by the OAE, respondent argued that his

conduct was not as severe as that of the attorney in In re Jones, 245 N.J. 379 (2021), who received a one-year suspension in connection with his conviction, in a Florida state court, for felony possession of an unspecified amount of cocaine. Respondent further argued that his conduct was not as egregious as that of the attorney in In re Hasbrouck, 140 N.J. 162 (1995), who received a one-year suspension for surreptitiously obtaining prescription pads from her father, a physician, and then forging prescriptions to obtain pain medication to satisfy her personal drug addiction.

**Analysis and Discipline**

*Violations of the Rules of Professional Conduct*

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995).

Pursuant to RPC 8.4(b), it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Thus, respondent's guilty plea and convictions for misdemeanor knowingly dispensing a controlled substance without a valid

prescription, in violation of 21 U.S.C. § 842(a)(1) and (c)(2)(A), and misdemeanor aiding and abetting in the distribution of a controlled substance, in violation of 18 U.S.C. § 2, establishes his violation of RPC 8.4(b).

In sum, we find that respondent violated RPC 8.4(b). Hence, the sole issue left for our determination is the proper quantum of discipline for respondent's misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

*Quantum of Discipline*

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 139 N.J. at 460. Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J.

at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances," including the "details of the offense, the background of respondent, and the pre-sentence report" before reaching a decision as to the sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

That an attorney's misconduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the degree of sanction. Musto, 152 N.J. at 173. Offenses that evidence ethics shortcomings, although not committed in an attorney's professional capacity, may nevertheless warrant discipline. Hasbrouck, 140 N.J. at 167. The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

As a threshold matter, we decline to accord significant weight to Kamp's May 30, 2024 affidavit, describing respondent's purported conscientiousness in handling prescriptions for narcotics. R. 1:20-13(c)(2) provides, in pertinent part, that in a motion for final discipline:

> [t]he sole issue to be determined shall be the extent of final discipline to be imposed. The Board and the Court may consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the

> criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter.

Applying the Rule in a light most favorable to respondent, even if Kamp's affidavit does not expressly refute respondent's illegal distribution of 240 tablets of oxycodone, the affidavit contradicts Judge Bartle's findings and respondent's admission, at sentencing, that his conduct was not merely an isolated incident but, rather, occurred "over a period of time, notwithstanding that [respondent] pled guilty to the one prescription." When viewed against Judge Bartle's findings and respondent's admissions at sentencing, Kamp's assertions that respondent made consistent efforts to ensure the proper dispensing of narcotics lacks sufficient credibility and, thus, we decline to accord significant weight to his affidavit in determining the appropriate quantum of discipline.

Rather, in crafting the appropriate sanction, we accord appropriate weight to respondent's admissions and Judge Bartle's findings during sentencing. See In re Gallo, 178 N.J. 115, 120-21 (2003) (in motions for final discipline, the Court "cannot ignore relevant information that places an attorney's conduct in its true light[;]" moreover, "[a]s there are no restrictions on the scope of disciplinary review in a case of an attorney who was not charged with a crime or who was acquitted of a crime, there is no commonsense or policy justification for imposing such restrictions when an attorney has pled guilty to a crime[;]"

the Court emphasized that its "disciplinary oversight responsibility cannot be curtailed by artificial impediments to the ascertainment of truth").

Additionally, we find that Hasbrouck and Jones, on which respondent relies, are inapplicable to this matter. Jones involved an attorney who unlawfully possessed cocaine while Hasbrouck concerned an attorney who obtained, by deception, illicit prescription drugs for her own personal use. By contrast, respondent's conduct in this matter pertains to his illegal distribution, while a licensed pharmacist, of 240 tablets of oxycodone to another individual based on a prescription he knew to be altered and forged.

The Court has observed that "a conviction [for] distribution of a controlled dangerous substance is a very serious transgression and 'evidences a public judgment that places in question the lawyer's integrity and respect for the law.'" Kinnear, 105 N.J at 395 (quoting In re Kaufman, 104 N.J. 509, 514 (1986)). "In most cases[,] an attorney convicted of distribution of controlled dangerous substances would be disbarred," particularly "if the distribution were done for gain or profit." Musto, 152 N.J. at 176 (citation omitted).

Accordingly, the Court has disbarred attorneys who have "engaged in wide-ranging conspiracies to distribute controlled dangerous substances for financial gain." Ibid. See e.g., In re Gruhler, 250 N.J. 429 (2022) (the attorney and her husband engaged in the street-level distribution of a variety of addictive

controlled substances, with a firearm, for profit; once arrested, the attorney did not cooperate with law enforcement and attempted to obstruct justice by lying about her husband's identity and their illicit activities; in aggravation, the attorney had a prior career in law enforcement, giving her an awareness of the grim consequences her conduct had on society and on her status as a lawyer); In re Canton, 193 N.J. 331 (2008) (the attorney pleaded guilty, in federal court, to possession with the intent to distribute controlled substances and importing controlled substances; specifically, the attorney conspired to import into the United States approximately one thousand kilograms of cocaine belonging to a Colombian paramilitary organization; in exchange, a portion of the proceeds from the sale of the cocaine would be used to pay him for the weapons that he planned to provide to the organization; he was sentenced to fourteen years in prison and five years of supervised release); In re Valentin, 147 N.J. 499 (1997) (the attorney sold more than a pound of cocaine to a police informant for $11,500; the distribution was solely for financial gain); In re McCann, 110 N.J. 496 (1988) (the attorney was actively involved in a large scale and prolonged criminal narcotics conspiracy, as well as tax evasion; the attorney was motivated by greed); In re Goldberg, 105 N.J. 278 (1987) (the attorney played a significant role in a three-year criminal conspiracy to distribute large quantities of phenylacetone (P-2P), a Schedule II controlled substance; the defendants

purchased nine tons of P-2P, enough for $200 million worth of "speed," at a profit of at least $3.5 million; the attorney was motivated by financial gain).

Nevertheless, the Court has acknowledged that "disbarment does not automatically result from a distribution conviction." Musto, 152 N.J. at 177.

For example, the attorney in Kinnear, "an admitted addict," provided 1.35 grams of cocaine to a "purportedly good friend – a police informant – who claimed he was unable to secure the drugs." 105 N.J. at 392, 396. Following his guilty plea and conviction, in the Superior Court of New Jersey, for one count distributing a controlled dangerous substance, Kinnear received a three-year sentence of probation, with the condition that he continue outpatient drug addiction treatment. Id. at 392-93. In imposing a one-year suspension rather than disbarment, the Court found that Kinnear "was primarily a drug user, and his misconduct constituted one episode, unrelated to the practice of law, and unlikely to recur." Id. at 396-97.

Ten years later, in Musto, the Court suspended an attorney for three years in connection with his respective convictions, in the Superior Court of New Jersey and in federal court, for possession of methyl ecgonine, heroin, and cocaine, in violation of N.J.S.A. 2C:35-10(a)(1); conspiracy to possess heroin and cocaine, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10; and conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846. 152 N.J. at

170-72, 82. In that matter, beginning in 1991, Musto began "using heroin and cocaine heavily" because of personal and work-related hardships. Id. at 168. In 1993, the Federal Bureau of Investigations arranged for Musto's friend to purchase drugs from him. Id. at 169. Specifically, in exchange for $5,800 from the friend, Musto purchased cocaine, on three occasions on the friend's behalf, and kept $200 of the friend's funds to buy heroin for himself. Ibid. The Superior Court sentenced Musto to an aggregate four-year term of incarceration, and the federal court sentenced him to a six-month term of incarceration, followed by a three-year period of supervised release. Id. at 171.

In imposing a three-year suspension, rather than disbarment, the Court emphasized that Musto's cocaine distribution was limited to providing it to a friend for her personal use. Id. at 179. The Court also underscored how Musto "was primarily a drug user" who utilized his $200 profit from the drug transaction "to feed his heroin addiction." Ibid. Further, the Court noted that Musto's conduct did not harm his clients and that he "was able to meet his professional obligations while he spiraled down the path of drug addiction." Id. at 178. Additionally, the Court found that Musto did not "use his professional status or skills as an attorney to assist in his criminal acts," and he was not actively practicing law at the time of his criminal conduct. Ibid. The Court concluded that, "given [Musto's] efforts to rehabilitate himself," his ethics

infractions did not "reflect a defect in professional character so grave as to require disbarment." Id. at 181.

Similarly, in Banks, the Court suspended an attorney for two years in connection with his convictions, in the Superior Court of New Jersey, for third-degree "manufacture and/or possession of marijuana," with the intent to distribute, in violation of N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(11). 155 N.J. at 597. In that matter, at time of his arrest, police discovered eighteen marijuana plants growing on Banks's property, equipment to grow marijuana, and other drug paraphernalia. In the Matter of Glenn W. Banks, DRB 97-278 (June 29, 1998) at 3. In recommending a two-year suspension, we noted that Banks did not appear to have any intent to sell marijuana or engage in a scheme of drug distribution for profit, which would warrant his disbarment. Ibid. Rather, we found that Banks had intended to use the marijuana "personally and to share it with some close friends." Ibid. We concluded that Banks was not motivated by financial gain, and there was no indication that his "drug use adversely affected any clients." Ibid. The Court agreed with our recommended discipline.

In In re Neggers, 185 N.J. 397 (2005), an attorney was admitted into the pre-trial intervention program following the issuance of a two-count accusation charging her with possession of heroin, in violation N.J.S.A. 2C:35-10(a)(1), and possession of heroin with the intent to distribute, in violation of N.J.S.A.

2C:35-5(b)(3). In the Matter of Wendy Ellen Neggers, DRB 05-217 (Oct. 26, 2005) at 3. Neggers, whose charges arose from a drug overdose in her parents' home, was a recovering heroin addict at the time. Id. at 2. Her father found thirty-one bags of heroin, which he turned over to the police. Ibid. Hospital nursing staff found five additional packets. Ibid. After she was treated and released from the hospital, Neggers completed a partial hospitalization drug treatment program, followed by an intensive outpatient program. Id. at 2-3. She was "very remorseful" for the overdose and had taken full responsibility for her actions. Id. at 2.

In determining that a one-year suspension was the appropriate quantum of discipline, we weighed "the considerable strides" that Neggers had made in her efforts at rehabilitation, which included in-patient and out-patient treatment; methadone maintenance; psychotherapy; and the pursuit of both a certification in alcohol and drug counseling and a master's degree. Id. at 4-5. We also considered Neggers's retirement from the bar, as she intended to pursue a career in the "addictions field." Id. at 5. We juxtaposed Neggers's "tremendous gains in her efforts at drug rehabilitation and her eagerness to move forward with her life" against the thirty-six bags of heroin in her possession at the time of her arrest, which resulted in her being charged with intent to distribute. Id. at 8. The Court disagreed with our recommended discipline and imposed a three-month

suspension. Neggers, 185 N.J. at 397.

More recently, in In re Kapalin, 227 N.J. 224 (2016), the Court imposed a three-year suspension on an attorney who pleaded guilty, in the United States District Court for the District of New Jersey, to conspiracy to smuggle contraband into a correctional facility, in violation of 18 U.S.C. § 371 and 18 U.S.C. § 1791(a). Kapalin was sentenced to one month in custody and five months of home confinement, followed by three years of supervised release, and was ordered to pay more than $5,000 in fines and assessments. In the Matter of Charles B. Kapalin, DRB 15-385 (Aug. 12, 2016) at 4.

Between August 2013 and May 2014, Kapalin engaged in a scheme to smuggle contraband to inmates who were held on federal charges in the Essex County Correctional Facility. Id. at 2-3. Specifically, he used his status as an attorney to secure meetings with the inmates, who were part of the scheme. Id. at 3. Kapalin delivered the marijuana and tobacco to the inmates inside of an attorney conference room and was paid cash for each instance of smuggling. Ibid. In total, he carried out the smuggling operation on eight occasions and received cash payments totaling $5,000 to $6,000. Ibid.

In determining that a three-year suspension was the appropriate quantum of discipline, we considered Kapalin's "significant mitigation." Id. at 11-12. After many years of dedication to public service as an assistant prosecutor, he

decided against pursuing a "lucrative job," choosing instead to become a criminal defense attorney to "under-represented communities." Id. at 11. Further, as reflected in a psychological evaluation, Kapalin became caught in a "perfect storm of clinical depression and financial stress," as the result of his wife's death following a prolonged battle with cancer and his son's battle with cocaine addiction, which included stealing from Kapalin and his wife. Ibid. In additional mitigation, we viewed Kapalin's misconduct as "aberrational" and noted that he had cooperated with law enforcement. Id. at 11-12. The Court agreed with our recommended discipline.

Here, respondent's decision, as a licensed pharmacist, to dispense 240 tablets of oxycodone to an individual, based on a forged prescription, bears some resemblance to that of the attorney in In re McCarthy, 119 N.J. 437 (1990), who received the equivalent of a twenty-seven-month suspension. In that matter, McCarthy, who was both an attorney and licensed physician, issued 108 prescriptions for controlled substances to four patients, during a two-year timeframe, without obtaining a valid DEA registration number, in violation of N.J.S.A. 24:21-19(a)(1). In the Matter of Stephen P. McCarthy, DRB 89-159 (Feb. 7, 1990) at 2. Because McCarthy deliberately failed to register with the DEA, he had no authority to issue the prescriptions for controlled substances, despite his status as a licensed physician. Ibid. Moreover, during the span of

nearly three years, McCarthy issued seventeen fraudulent prescriptions, using the names of family or friends, in order to obtain controlled substances for his personal use, in violation of N.J.S.A. 24:21-22(a)(3). Ibid. The Superior Court sentenced McCarthy to an aggregate two-year term of probation, with the condition that he continue his mental health counselling and pay a $60 penalty. Id. at 1-2.

In recommending that McCarthy receive a disciplinary suspension of time served from the date of his March 1988 temporary suspension, which had become effective nearly two years earlier, we emphasized that McCarthy was "highly educated, both as a physician and an attorney," and, thus, should have known "the importance of upholding the law as well as the intrinsic harm in dispensing controlled dangerous substances clearly 'beyond the good faith practice of his profession.'" Id. at 4 (quoting In re Bricker, 90 N.J. 6 (1982)). We also echoed the Appellate Division's pronouncement, in State v. Vaccaro, 142 N.J. Super. 167, 173 (App. Div. 1976), certif. denied, 71 N.J, 518 (1976), that a physician who "engages in dispensing or selling [controlled substances] beyond the necessities of the good faith practice of his profession[] is no less a 'pusher' of drugs – a criminal – than a layman unadorned by the trappings of a license or registration." McCarthy, DRB 89-159 at 3. Further, we weighed, in aggravation, the fact that McCarthy had distributed drugs to others, without a

valid DEA registration number, and that his personal drug use had occurred repeatedly during the span of three years. Id. at 5. Finally, we noted that McCarthy failed to participate in the disciplinary process, demonstrating his indifference to the value of his law license. Ibid. The Court agreed with our recommended discipline, resulting in McCarthy receiving the equivalent of a twenty-seven-month suspension.

Unlike most members of the bar, respondent's status as a licensed pharmacist rendered him uniquely aware of the grim consequences of dispensing high quantities of illicit opioids into the community. Despite his specialized education and training regarding the proper dispensing of such dangerous substances, on May 26, 2018, respondent criminally distributed 240 tablets of oxycodone to a patient based on a forged prescription in exchange for a large cash payment. Moreover, according to the government, respondent falsely noted in Verree's official records that he had billed "Workers' Compensation" for the prescription when, in fact, he had accepted the $820 cash payment for the illicit transaction.

Although respondent pleaded guilty to only one instance of distributing controlled substances without a valid prescription, Judge Bartle found, and respondent conceded, that his conduct was not merely an isolated episode. Rather, as described by Judge Bartle, respondent's conduct spanned "a number

of years." However, based on the limited record before us, respondent's mens rea in connection with those additional instances of dispensing illicit opioids is unclear. Nevertheless, in connection with the May 26, 2018 incident, respondent accepted criminal responsibility for dispensing oxycodone to an individual based on a prescription he knew to be forged. Consequently, unlike the attorneys in Kinnear and Banks, who received one- and two-year suspensions, respectively, for distributing or intending to distribute a limited quantity of controlled substances to their friends, in our view, respondent abused his training and skills as a pharmacist to distribute a large quantity of illicit opioids into the community, on at least one occasion, thereby contributing to the national opioid epidemic.

Moreover, unlike the attorney in McCarthy, who issued fraudulent prescriptions in the names of his friends and family members, solely to abuse illicit substances himself, there is no indication that respondent's misconduct resulted from his need to satisfy his own drug use. Further, although the attorney in McCarthy issued prescriptions for controlled substances without a valid DEA registration number, there was no evidence that such prescriptions were otherwise inappropriate for those patients. By contrast, respondent, on at least one occasion, illegally dispensed opioids into the community based on a forged prescription, creating a serious risk of harm to those who may have taken the

illicit medication.

Nevertheless, unlike the attorneys who have been disbarred for participating in larger conspiracies to distribute controlled substances for profit, there is no indication that respondent received any financial benefit from his misconduct, other than his salary as a part-time pharmacist at Veree. Moreover, although respondent acknowledged, at sentencing, that his criminal conduct was not simply "a one off" incident and that it had "occur[ed] over a period of time, notwithstanding [his guilty plea] to the one prescription," respondent's role in Veree's and Spivack's purported larger scheme of drug distribution is unclear based on the limited record before us.

**Conclusion**

On balance, weighing respondent's unique position as a licensed pharmacist in criminally distributing controlled substances to at least one individual against the lack of clear and convincing evidence that he had participated in a larger drug distribution scheme, we determine that a three-year suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Because respondent was temporarily suspended in connection with his misconduct underlying this matter, we also recommend that his three-year

suspension be imposed retroactive to January 19, 2024, the date of his temporary suspension. See In re McWhirk, 250 N.J. 176 (2022) (in connection with a motion for reciprocal discipline, the Court imposed the attorney's four-year term of suspension retroactive to his April 2016 temporary suspension for the same misconduct underlying the motion).

Finally, we decline to adopt the OAE's recommendation that, going forward, attorneys who distribute narcotics should face more stringent discipline. The disciplinary precedent established in Kinnear and Musto and their progenies provide clear guidance regarding when disbarment is the appropriate level of sanction for drug distribution. Although the prevalence of opioid abuse undoubtedly has risen in recent years, such circumstances do not warrant increasing the typical minimum level of sanction for drug distribution from a long term of suspension to disbarment. Cf. Spina, 121 N.J. at 389 (noting that it "is appropriate . . . to examine the totality of the circumstances" in determining the appropriate level of sanction in motions for final discipline), and In re Kushner, 101 N.J. 397, 400 (1986) (emphasizing that "[d]isciplinary determinations are necessarily fact-sensitive").

Member Rodriguez voted to recommend the imposition of a one-year suspension, retroactive to respondent's January 19, 2024 temporary suspension.

Member Hoberman was absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Todd Andrew Goodman
Docket No. DRB 24-075

Argued: July 25, 2024

Decided: September 5, 2024

Disposition: Three-Year Suspension

| ***Members*** | Three-Year Suspension | One-Year Suspension | Absent |
|---|---|---|---|
| Cuff | X | | |
| Boyer | X | | |
| Campelo | X | | |
| Hoberman | | | X |
| Menaker | X | | |
| Petrou | X | | |
| Rivera | X | | |
| Rodriguez | | X | |
| Spencer | X | | |
| Total: | 7 | 1 | 1 |

*/s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel